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IN THE
Supreme Court
OF THE
United States

OCTOBER TERM, 1951

No. 151

UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, VALIER COMMUNITY CLUB a voluntary
civic organization, BOARD OF RAILROAD COMMISS-
SIONERS OF THE STATE OF MONTANA, and MONTANA
WESTERN RAILWAY COMPANY,

Defendants and Appellants

Vs.

GREAT NORTHERN RAILWAY COMPANY, A Corporation,
Plaintiff and Appellee.

BRIEF OF THE MONTANA WESTERN RAILWAY COMPANY
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA
FOURTH DIVISION

ART JARDINE

S. B. CHASE, JR.

JOHN D. STEPHENSON

410 First National Bank Building
Great Falls, Montana,
Attorneys for The Montana Western
Railway

Filed 1951

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I.

THE OPINION OF THE COURT BELOW

The decision of the statutory Three Judge Court of the United States District Court for the District of Minnesota, Fourth Division, was rendered in 96 Federal Supplement 298 and is found on page 592 of the Record. Final decree therein was entered in said court on March 27, 1951, and the appeal is taken from such final decree.

II.

JURISDICTION

The Judgment of the specially-constituted Three Judge Court setting aside the order of the Interstate Commerce Commission was entered on March 27, 1951. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. 1253 and 2101 (b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment in this case on direct appeal: United States v. U. S. Smelting Co. 339 U.S. 186; Pennsylvania Railway Co. v. United States 323 U.S. 588; New England Divisions Case, 261 U. S. 184.

III.

QUESTIONS PRESENTED

The brief of the United States of America contains a statement of the Questions Presented and the same is adopted as part of this brief with the added suggestion that if this court sustains the decision of the

Three Judge Court, then and in that event the decision of this court should direct the Interstate Commerce Commission to make an order authorizing the abandonment of The Montana Western Railway Company, as it obviously cannot continue to operate its railway without the increase in revenue allowed under Report and Order of the Interstate Commerce Commission.

IV.

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act, particularly Sections 13 (2), 15^d(1), (3), (4), (6).

V.

STATEMENT OF CASE

The brief of the United States contains a statement of the case. There is likewise a statement of facts contained in the decision of the Interstate Commerce Commission found on pages 10 to 24 inclusive of the Record. Applicable facts are also contained in the findings of fact, conclusions of law and order for judgment and decree of the Three Judge Court shown on pages 595 to 604 of the Record and in the opinion, Per Curiam, of that Court filed March 16, 1951 and shown at pages 592 to 594 of the Record. In that opinion the Court stated, "That Montana Western is insolvent and is in dire need of financial aid if it is to continue to operate goes without saying."

This statement of the Court is sustained by the evidence and is undisputed.

In order that the Court may have a short statement of the factors and conditions that made it necessary for Montana Western Railway Company to file its petition to abandon this railway line, which has ultimately resulted in this matter being presented to this Court, the following facts are briefly summarized: The railroad (The Montana Western Railway Company) was constructed in 1909. It is twenty and one-half miles long of which three miles is now operated over tracks owned by Great Northern Railway Company. (Record P. 21). It is wholly within Pondera County, Montana, and the only line with which it connects for interchange of traffic is The Great Northern Railway Company at Conrad, Montana. (R.-58). At the time the railroad was built a Carey Land Act project was being constructed in what is now Pondera County, Montana, by a corporation known as Conrad Land & Water Company. (R.-96). This company furnished part of the capital for the construction of the railroad by paying \$150,000.00 for stock in the railroad company that was issued to it. (R.-96). Great Northern Railway Company furnished \$144,000.00 for materials, construction and rolling stock. (R.-97). The Great Northern was given bonds and a mortgage to secure this indebtedness and the accrued interest thereon, which mortgage was dated January 1, 1912, and is in the principal sum of \$165,000.00 plus interest thereon.

at the rate of six percent (6%) per annum. (R.-81).

As was the case with most corporations that attempted construction of irrigation projects under the Carey Act, Conrad Land & Water Company failed financially, as did its two successor companies. The last one, The Valier-Montana Land & Water Company, the immediate predecessor company of The Valier Company, filed proceedings under Chapter 10 of the Bankruptcy Act and was adjudged a bankrupt. This bankrupt corporation owned all of the capital stock of The Montana Western Railway Company, which stock was appraised at the sum of One Dollar (\$1.00) in the bankruptcy proceedings. (R. 101-102; 451-452). The new company, The Valier Company, was organized and through the bankruptcy proceedings the stock in the Montana Western Railway Company was transferred to it.

In July 1949 The Montana Western Railway Company owed Great Northern Railway Company \$737,604.22, (R.-89), and this indebtedness is now over three-quarters of a million dollars. Its assets at that time had a value of \$41,643.00 including land, rails, bars, tie plates and one old locomotive and one old gas electric engine. (R. 117-118). This was the total value of all its assets except cash and accounts receivable which amount varies from nothing to \$20,000.00 or \$30,000.00 depending on the time of the year and the amount of grain shipments that have been made at any particular time.

From 1933 to 1948 inclusive the average yearly

deficit of The Montana Western Railway Company was \$18,672.00 and from the year 1924 to early in the year 1949 Great Northern Railway Company met the deficits of The Montana Western Railway Company. (R.122-123).

Generally about ninety-six per cent (96%) of the total freight traffic of The Montana Western Railway Company is interstate. Ninety-one per cent (91%) of the total tonnage and ninety-seven per cent (97%) of the outbound tonnage consists of products of agriculture. (R.-15).

Based on an average of 25,000 tons of grain a year, and assuming that costs of operation remain the same in the future as they were in 1949, it would be necessary for The Montana Western Railway Company to receive an additional six and three-quarter cents per hundred or \$33,825.00 a year in order to just meet the cost of operating its railroad, interest on its bonds and State and County taxes. (R.-517). An increase of one cent per hundred on grain shipped over the railroad would produce \$5,000.00 a year additional revenue, so, six and three-quarter cents per hundred would produce the sum of \$33,825.00. This amount of money would not provide any funds whatever for operating capital, reduction of debt, or funds for any contingencies, but would only provide funds for the actual operating expenses, interest on the mortgage indebtedness and taxes. (R. 517-518). The railroad is in an unsafe operating condition, a bridge over the Dry Fork is badly in need of repairs

and a large number of ties must be replaced if the train is to operate over the tracks with any degree of safety. (R. 505-507).

We realize that some of the facts herein set forth are not matters requiring consideration in the determination of the controversy involved before the Court at this time, but they are included herein in order that the Court may be informed as to the background and matters that led up to the present proceeding.

VI. ARGUMENT

Appellants United States of America and Interstate Commerce Commission have filed their joint brief and The Montana Western Railway Company concurs in arguments made and authorities cited in support thereof, and feels that it is neither necessary or advisable to either reiterate or attempt to enlarge upon the able presentation made in their brief.

The applicable sections of the Interstate Commerce Act are annexed hereto as an Appendix and made a part of this brief.

Summarized The Montana Western Railway Company maintains that the Findings and Order of Interstate Commerce Commission were within Jurisdiction and made pursuant to Statutory Authority and did not violate any provisions of that Act, and specifically Section 15 (4) of the Act.

"A"

A THROUGH ROUTE EXISTS AND THE COMMISSION HAD AUTHORITY TO ESTABLISH A THROUGH ROUTE, JOINT CLASSIFICATION AND JOINT RATES AND TO ORDER JUST, REASONABLE AND EQUITABLE DIVISIONS THEREOF.

The Montana Western Railway Company maintains that there was a through route between it and the Great Northern Railway Company which had been in operation and existence for years between points on The Montana Western Railway Company and Great Northern Railway Company. For more than thirty-five years practically all grain transported over The Montana Western Railway Company moved by continuous carriage from that railroad to a point or points on Great Northern Railway Company. The only connection The Montana Western Railway Company had with any line of railroad was its connection with Great Northern Railroad at or near Conrad, Montana, and practically all grain shipped during the whole of the life of The Montana Western Railway Company has moved in continuous carriage from its line to points on the Great Northern.

"* * * A **through route** is an arrangement, express or implied, between connecting railroads and continuous carriage from a point on the line of one to the destination on the line of another. A joint rate is not essential. The through rate may as well be a combination of locals or proportionals."

Western Pacific v. Northwestern Pacific Ry. Co.,
191 I. C. C. 127, at 130.

As a **through route** exists, the Commission may prescribe joint rates and may deal with a division of those joint rates between the carriers involved.

Section 15 (3) provides that the "Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint **or upon its own initiative without complaint**, establish through routes, joint classifications, and joint rates * * * and the division of such rates, fares or charges as hereinafter provided * * *."

Section 15 (6) provides:

"Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers * * *."

"B"

**THE INTERSTATE COMMERCE COMMISSION
HAD AUTHORITY TO CONSIDER THE FINANCIAL
NEEDS OF THE MONTANA WESTERN
RAILWAY COMPANY.**

In order that an adequate transportation system may be maintained, the Commission has authority to fix the division of joint rates and may take into consideration the financial needs of the carriers and provide a larger division to the financially weaker

carrier, by taking into consideration that carriers needs. *New England Divisions Case*, 261 U.S. 184, 189-195; *United States v. Abilene & Southern Railway Co.* 265 U.S. 274, 284-5; *Baltimore & Ohio R. Co. v. United States* 298 U.S. 349, 381.

"C"

THE DISTRICT COURT ERRED IN HOLDING SECTION 15 (4) OF THE INTERSTATE-COMMERCE ACT CONTROLLING

Title 49 United States Code, Section 15 (4) contains the following provision: "Provided, however, that in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs". The Court held that the divisions provided for in the order of Interstate Commerce Commission was "but a means to the end of assisting Montana Western to meet its obvious financial needs. This is expressly prohibited by law".

Prior to the Amendment of Section 15 (4) in 1940 that section was construed as being applicable only to cases involving short-hauling. *United States v. Missouri-Pacific R. Co.* 278 U.S. 269; *Pennsylvania R. Co. v. U.S.* 323 U.S. 588, 590-3. If the amendment to section 15 (4) of the Act made in 1940 was

intended to have general application, then it would appear that section 15 (6) which directs that the Commission give consideration to the financial needs of the carriers in prescribing joint rates should have been amended or repealed in so far as that provision of Section 15 (6) conflicted with the amendment to Section 15 (4). But if Congress intended that the amendment to Section 15 (4) applied only to short hauls, then there was no necessity for amending Section 15 (6) as the provisions of the two sections do not conflict.

CONCLUSION

We respectively submit that Section 15 (4) is not applicable and that Sections 15 (1), (3) and (6) are controlling, and that the decree of the District Court should be reversed, since the Interstate Commerce Commission in making its report and order in this matter acted within jurisdiction and under express authority given it by the Act of Congress.

Respectively submitted,

Art Jardine

S. B. Chase Jr.

John D. Stephenson
Counsel for The Montana Western
Railway Company, one of Appellants.

APPENDIX

PROVISIONS OF INTERSTATE COMMERCE ACT

Sec. 15 (As amended June 29, 1906, June 18, 1910, February 28, 1920, March 4, 1927, June 19, 1934, August 9, 1935, and September 18, 1940). (U.S. Code, Title 49, sec. 15).

(1) Whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property or for the transmission of messages as defined in the first section of this chapter, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum,

or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

(2) X X X X X

(3) The Commission may, and it shall whenever deemed by it to be necessary or desireable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the

terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section.

(4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be estab-

lished is needed in order to provide adequate, and more efficient or more economic, transportation: Provided, however, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

(5) X X X X X

(6) Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of the opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise

established); the commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.